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property itself, and sues for damages, the difficulty in separating the enhanced value from the original value no longer exists. It is then entirely practicable to give to the owner the entire value that was taken from him, which it seems that natural justice requires, without adding to it such value as the property may have afterward acquired from the labor of the defendant. In the case of recaption, the law does not allow it, because it is absolute justice that the original owner should have the additional value. . . . But if the owner chooses to resort to another remedy, in applying which the law may give him full compensation for all that he has lost without compelling the wrong-doer to pay more, I see no reason why that should not be the rule." See, in accord, *Gaskins v. Davis*, 115 N. C. 85 (44 Am. St. Rep. 439).

ORIGIN OF THE COMMON LAW OF ENGLAND.—1. The prevalent view is that it is based on immemorial customs. "The unwritten law is that which custom has approved; for ancient customs, established by the consent of those who use them, put on the character of law (*legem imitantur*).” Inst. 1, 2, 9.

2. Another view is that the common law is nothing but "statutes worn out by time." In 1 Tucker's Com. p. 23, the view is adopted that a greater part of the now unwritten law is founded upon the memory of ancient statutes worn out by time, and not now to be found of record in the statute books. And see 1 Bl. Com. Introd. sec. 3 (85); Hale's History C. L., p. 66.

3. A third view is that the common law is in a large measure judge-made law, the result of real, though not avowed, judicial legislation. Pomeroy's Municipal Law, secs. 10-15, 27-29, 36-40, 268-313, 344-355; Stearns' "Germs of the Law of England," p. 353-4.

4. It is now conceded that a large portion of the so-called common law was borrowed from the civil law of Rome. See Güterbock's "Bracton in his Relation to the Civil Law."

In his Lectures on the Common Law (Lecture 7, p. 175) Judge Sharswood says: "In the main, the common law may be described as a system built upon the foundation of Feudalism, with large materials imported from the Roman Code, occasionally modified, perhaps, by ancient Celtic, Saxon, Danish, and Norman laws and customs." No doubt this is a correct description of the common law, except in its omission to recognize the moulding hand of the judges, laying that down to be the *common law* which they believed to be *common sense and justice*.

A strong illustration of equitable doctrines is found in *Eaton v. Robinson* (R. I.) 29 L. R. A. 100, where officers of a corporation, who had received salaries which they had voted and paid partly and largely for the purpose of depriving stockholders of the funds of a pending litigation if it should be successful, although they were paid nominally and partly for services rendered, were compelled to account to the stockholders for all sums which had been withdrawn for salaries, with interest thereon.